

one of the Department's operating contractors. In these cases, the actual cost of the subcontracted construction work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base for additional allowances (using the Special Equipment Purchases or Subcontract Work Schedule) shall be established, which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

**915.404-4-72 Special considerations for cost-plus-award-fee contracts.**

(a) When a contract is to be awarded on a cost-plus-award-fee basis several special considerations are appropriate. Fee objectives for management and operating contracts or other contracts as determined by the Senior Procurement Executive, including those using the Construction, Construction Management, or Special Equipment Purchases/Subcontract Work schedules from 915.404-4-71-5, shall be developed pursuant to the procedures set forth in 970.15404-4-8. Fee objectives for other cost-plus-award-fee contracts shall be in accordance with 916.405-2 and be developed as follows:

(1) The base fee portion of the fee objective of an award fee contract may range from 0% up to the 50% level of the fee amount for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived at by using the weighted guidelines or other techniques (such as those provided in 915.404-4-71 for construction and construction management contracts). However, the base amount should not normally exceed 50% of the otherwise applicable fixed fee. In the event this 50% limit is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(2) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more

than 50%. However, in the event the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(3) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee percent	Award fee percent	Maximum total percentage
50 .....	100	150
40 .....	120	160
30 .....	140	170
20 .....	160	180
10 .....	180	190
0 .....	200	200

(b) Prior approval of the Senior Procurement Executive, is required for total fee (base plus award fee pool) exceeding the guidelines in 915.404-4-72(a)(3).

[63 FR 56851, Oct. 23, 1998, as amended at 64 FR 12229, Mar. 11, 1999; 74 FR 36364, 36378, July 22, 2009; 76 FR 7693, Feb. 11, 2011]

**915.408 Solicitation provisions and contract clauses.**

**915.408-70 Key personnel clause.**

The contracting officer (after deleting "under the clause at 970.5203-3, Contractor's Organization" from paragraph (a) if not a management and operating contract) shall insert the clause at 952.215-70, Key Personnel, in contracts under which performance is largely dependent on the expertise of specific key personnel.

[65 FR 81006, Dec. 22, 2000, as amended at 74 FR 36364, July 22, 2009]

**Subpart 915.6—Unsolicited Proposals**

**915.602 Policy.**

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique and innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity

## Department of Energy

Pt. 916

of the acquisition process through application of reasonable controls, the DOE:

(1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(4) Processes unsolicited proposals in an expeditious manner and, where practicable, keeps proposers advised as discrete decisions are made;

(5) Assures that each proposal is evaluated in a fair and objective manner; and, (6) Assures that each proposal will be used only for its intended purpose and the information, subject to applicable laws and regulations, contained therein will not be divulged without prior permission of the proposer.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

### 915.603 General.

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition in this paragraph.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

### 915.605 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for non-nuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of subpart 917.70.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

### 915.606 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Manager, U.S. Department of Energy, National Energy Technology Laboratory P.O. Box 10940, MS 921-107, Pittsburgh, PA 15236-0940. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

[63 FR 56851, Oct. 23, 1998, as amended at 67 FR 14871, Mar. 28, 2002; 74 FR 36364, July 22, 2009]

### 915.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(c) DOE's cost participation policy, at subpart 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

[74 FR 36364, July 22, 2009]

## PART 916—TYPES OF CONTRACTS

### Subpart 916.2—Fixed-Price Contracts

Sec.

916.203 Fixed-price contracts with economic price adjustments.

916.203-4 Contract clauses.

### Subpart 916.3—Cost-Reimbursement Contracts

916.306 Cost-plus-fixed-fee contracts.